

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, et
al.,

Debtors.¹

PROMESA
Title III

No. 17 BK 03283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE EMPLOYMENT RETIREMENT SYSTEM
OF THE COMMONWEALTH OF PUERTO RICO
("ERS"),

Debtor.

PROMESA
Title III

No. 17 BK 03566-LTS

MOTION TO STAY CONSIDERATION OF:

**"UBS FINANCIAL SERVICES INCORPORATED OF PUERTO RICO'S
MOTION TO ENFORCE THE PLAN OF ADJUSTMENT
AND FOR RELATED INJUNCTIVE RELIEF"**

¹ The Debtors in these Title III cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283 (LTS)) (Last Four Digits of Federal Tax ID: 3481); (ii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566 (LTS)) (Last Four Digits of Federal Tax ID: 9686); (iii) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17-BK-3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808); (iv) Puerto Rico Sales Tax Financing Corporation (Bankruptcy Case No. 17-BK-3284 (LTS)) (Last Four Digits of Federal Tax ID: 8474); and (v) Puerto Rico Electric Power Authority (Bankruptcy Case No. 17-BK-4780 (LTS)) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as bankruptcy case numbers due to software limitations).

TO THE HONORABLE COURT:

Individual Plaintiffs, Pedro José Nazario Serrano; Joel Rivera Morales; María de Lourdes Gómez Pérez; Héctor Cruz Villanueva; Lourdes Rodríguez and Luis M. Jordán Rivera, all of them Retirees/Beneficiaries and Plaintiffs in a claim for damages described below that is currently pending in the Commonwealth of Puerto Rico Court of First Instance, San Juan Part (the “Commonwealth Court”), without submitting to the jurisdiction of this Court, very respectfully submit this motion to stay the consideration of the *“UBS Financial Services Incorporated of Puerto Rico’s Motion to Enforce the Plan of Adjustment and for Related Injunctive Relief”* (Docket No. 21651). Said Individual Plaintiffs STATE and PRAY as follows:

1. On July 28, 2022 UBS Financial Services Incorporated of Puerto Rico (hereinafter “UBS”) filed the motion titled *“UBS Financial Services Incorporated of Puerto Rico’s Motion to Enforce the Plan of Adjustment and for Related Injunctive Relief”*, at Docket No. 21651 (hereinafter, the “Motion to Enforce”). Essentially, UBS moves this Court to issue an Order, allegedly pursuant to Section 91.1 of the Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico et al. (the “Plan of Adjustment” or the “Plan”) to enjoin the Employees’ Retirement System of the Government of the Commonwealth of Puerto Rico (the “ERS”) and seven other individual plaintiffs who are beneficiaries of the ERS from litigating the case *Administración de los Sistemas de Retiro de los Empleados del Gobierno y la Judicatura de Puerto Rico v. UBS Financial Services Inc. of Puerto Rico*, Civ. No. KAC-2011-1067 (hereinafter, “Commonwealth Action”), which is pending before the Commonwealth Court.

2. Basically, UBS contends that the ERS and the individual plaintiffs no longer own the claims asserted in the complaint pending before the Commonwealth Court, because said claims supposedly are the same brought in the case captioned **Drivetrain, LLC v. Barclays, et al., Adv. Proc. No. 19-000280-LTS** (the “Underwriter Adversary Action”), which were transferred to the Avoidance Actions Trusts. UBS incorrectly argues that the remedies sought in the Commonwealth Action are the same remedies sought in the Underwriter Adversary Action, and requests an order to enjoin ERS and individual plaintiffs from further litigation in the Commonwealth Action to avoid being exposed to duplicative remedies.

3. However, the Underwriter Adversary Action has been stayed “in all respects” since the complaint was filed on 2019. In fact, on June 10, 2022, Judge Judith Gail Dein, who is presiding the Underwriter Adversary Action, entered an Order extending the “Initial Stay” up to and including **September 15, 2022**. *See Exhibit A*. Said Order also declares that the Trustee and the Defendants shall meet and confer regarding a schedule for Defendants to answer, **move to dismiss**, or otherwise respond to any complaint in the Adversary Proceedings. *Id.* ¶3. (Emphasis added.)

4. It is worth noting that said order was entered at the request of the Trustee, who on that same date, filed its “*Unopposed Motion of Avoidance Actions Trustee for Entry of Order Extending Stay of Adversary Proceeding*”, stating that he and his professional team “**have, and continue to, extensively evaluate the claims that are subject of the Adversary Proceeding and remains in the process of determining whether to pursue, settle, prosecute, abandon, or otherwise dispose of these claims**”. *See, Exhibit B*, ¶14. (Emphasis added.)

5. On the other hand, even if the Trustee goes forward with the Underwriter Adversary Action, UBS will in all probability file a responsive pleading seeking the dismissal of the complaint. In the event that UBS convinces the court to dismiss the Underwriter Adversary Action, the UBS' Motion to Enforce becomes moot.

6. In light of the foregoing, it is hereby respectfully submitted that the Motion to Enforce filed by UBS is at best premature, because it is not known if the Underwriter Adversary Action will be prosecuted, abandoned or dismissed. Until then, UBS cannot allege with certainty that it is exposed to duplicative remedies. Moreover, UBS may move to dismiss the complaint in the Underwriter Adversary Action and if such remedy is granted UBS' Motion to Enforce becomes moot.

7. As such, it is hereby respectfully requested that the consideration of the Motion to Enforce filed by UBS be also stayed, because it is premature. The Motion to Enforce should be considered only after it is decided that the Trustee will prosecute the Underwriter Adversary Action and after the court decides if the case will go forward after UBS files its responsive pleading.

8. In case that this stay is denied, the Individual Plaintiffs reserve all their rights and objections to oppose the Motion to Enforce filed by UBS on the merits.

THEREFORE, the Individual Plaintiffs respectfully request this Honorable Court to stay the consideration of *"UBS Financial Services Incorporated of Puerto Rico's Motion to Enforce the Plan of Adjustment and for Related Injunctive Relief"* (Docket No. 21651), until it is determined if the Trustee will prosecute the Underwriter Adversary Action, or if it will be abandoned or dismissed, or in the alternative, 30 days after UBS files its responsive pleading.

RESPECTFULLY SUBMITTED.

WE HEREBY CERTIFY: That on this same date a true and exact copy of this motion was filed with the Clerk of Court using CM/ECF system, which will notify a copy to counsel of record.

In San Juan, Puerto Rico, this 10th day of August 2022.

VICENTE & CUEBAS

P.O. Box 11609
San Juan, PR 00910-1609
Phone No. (787) 751-8000
Fax No. (787) 756-5250

/s/ Harold D. Vicente

Harold D. Vicente, Esq.
USDC-PR Bar No. 117711
hvicente@vclawpr.com

/s/ Harold D. Vicente-Colón

Harold D. Vicente-Colón, Esq.
USDC-PR Bar No. 211805
hdvc@vclawpr.com

PUJOL LAW OFFICES, PSC

P.O. Box 363042
San Juan, PR 00936-3042
Phone No. (787) 724-0900
Fax No. (787) 724-1196

/s/ Francisco Pujol Meneses

Francisco Pujol Meneses, Esq.
USDC-PR Bar No. 212706
fpujol@pujollawpr.com

BUFETE ANDREU & SAGARDÍA

261 Avenida Domenech
San Juan, Puerto Rico 009718
Phone No. (787) 754-1777/763-8044
Fax No. (787) 763-8045

/s/José A. Andreu Fuentes

José A. Andreu Fuentes, Esq.
USDC-PR Bar No. 204409
jaf@andreu-sagardia.com

*Counsel for Individual Plaintiffs, Beneficiaries of the Retirement System
of the Commonwealth of Puerto Rico*